

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANNA MARIE R. TRUJILLO,

Plaintiff,

v.

No. 09-109 BB/ACT

BUSINESS JOURNAL PUBLISHING, LC d/b/a
NEW MEXICO BUSINESS JOURNAL;
DOUG MILLER a/k/a **HUGH MILLER**, individually;
and **SYLVIA MILLER**, individually.

Defendants.

MEMORANDUM OPINION

This matter comes before the Court on Defendants' motion to dismiss. (Doc. 11). Defendants' motion contends, in part, that Plaintiff's claims should be dismissed because the Complaint (Doc. 4) fails to state viable grounds for federal jurisdiction. In response, Plaintiff concedes that federal jurisdiction is lacking, but, rather than assenting to dismissal, asks the Court to "remand[] to New Mexico state district court for all further proceedings." (Doc. 12). Because this suit was originally filed in federal court, it cannot be remanded to state court. *See* 28 U.S.C. § 1447 (explaining that remand is a procedure available for removed cases); *First Nat'l Bank of Pulaski v. Curry*, 301 F.3d 456, 467 (6th Cir. 2002) ("[W]hile a district court has the discretion to remand a case removed from state court, it may not remand a case that was never removed from state court."); *Post Performance, LLC v. Renaissance Imports, Inc.*, 333 F.Supp.2d 834, 837 (E.D. Mo. 2004) (finding that the district court could not remand a case that was originally filed in federal court).¹

¹ The United States Court of Appeals, Third Circuit has held that a federal district court may transfer a jurisdictionally deficient case to the appropriate state court if it is explicitly

Accordingly, Defendants' motion is granted and Plaintiff's suit is dismissed without prejudice.

A handwritten signature in black ink, reading "Bruce D. Black". The signature is written in a cursive, flowing style. The first name "Bruce" is written in a larger, more prominent script, followed by "D." and then "Black". The signature is positioned above a horizontal line.

BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE

empowered to do so by state law. *See Weaver v. Marine Bank*, 683 F.2d 744, 746-47 (3rd Cir. 1982). Without endorsing the Third Circuit's analysis, this Court simply notes that no New Mexico statute authorizes transfer here.